

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAVELL FOX,

Plaintiff,

9:19-cv-00498 (BKS/ATB)

v.

BERNARD SHEFTIC,

Defendant.

Appearances:

Plaintiff pro se:

Javell Fox
Coxackie Correctional Facility
P.O. Box 999
Coxackie, NY 12051

For Defendant:

Letitia James
New York State Attorney General
William E. Arnold, IV
Assistant Attorney General
300 South State Street, Suite 300
Syracuse, NY 13202

Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Javell Fox, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration. (Dkt. No. 1). On May 16, 2019, Defendant filed a motion under Fed. R. Civ. P. 12(c) for judgment on the pleadings. (Dkt. No. 6). Plaintiff's response was filed on June 28, 2019. (Dkt. No. 10). Defendant filed a reply on July 3, 2019. (Dkt. No. 11). This matter was assigned to United States Magistrate Judge Andrew Baxter who, on October 3, 2019, issued a Report-Recommendation

recommending that Defendants' motion be granted as to all claims except the Fifth cause of action, which alleges a First Amendment Religion claim, and the Ninth cause of action, which alleges Retaliation for filing *Fox v. Lee*, 9:15-cv-00390 (TJM/CFH). (Dkt. No. 13, at 19). Magistrate Judge Baxter advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 13, at 19). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Report-Recommendation is adopted in its entirety.

In recognition of Plaintiff's status as a pro se litigant, leave to file an amended complaint within thirty (30) days of the date of this Order is granted. Any such amended complaint will replace the existing Complaint and must be a wholly integrated and complete pleading that does not rely upon or incorporate by reference any pleading or document previously filed with the court. *See Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1128 (2d Cir. 1994) ("It is well established that an amended complaint ordinarily supersedes the original, and renders it of no legal effect." (quotation marks omitted)). If Plaintiff fails to file an amended complaint within thirty (30) days, only the Fifth and Ninth causes of action, as alleged in the Complaint, will proceed.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 13) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for judgment on the pleadings (Dkt. No. 6) is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that the First, Second, Third, Fourth, Sixth, Seventh, and Eighth causes of action are **DISMISSED without prejudice**; and it is further


ORDERED that Plaintiff is granted leave to file an amended complaint within thirty (30) days of the date of this Order; and it is further

ORDERED that if Plaintiff fails to file an amended complaint within thirty (30) days of the date of this Order, only the Fifth and Ninth causes of action, as alleged in the Complaint, will proceed; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: October 30, 2019
Syracuse, New York


Brenda K. Sannes
U.S. District Judge